

Application No. 09/870,498
Amendment dated January 31, 2008
Reply to Office Action of October 31, 2007

Docket No.: NY-EAPESP 203-US

REMARKS

Entry of the foregoing amendment is requested. Claims 5-7 and 31 will be pending.

Applicants point out, with respect to point "2" of the action, that they have NEVER had an Examiner insist on the repetition of this information in any other patent application.

Applicants have no idea what the Examiner intends in point 3. The Response to Interview Summary, dated February 28, 2007, stated that agreement WAS reached. Please review the text of the Examiner Interview Summary. Hence, with all due respect to the Examiner's view, since the Examiner reneged on the agreements reached during the interview, the remarks are germane, and applicants stand by them.

The Examiner has rejected claim 5, in view of Travis, U.S. Patent No. 5,447,914, and claims 5, 6, and 30 under 35 U.S.C. § 102(b) in view of Little, et al., WO 00/18951 plus Gasser. While claim 30 is canceled, claim 31 includes claim 30 which recites SEQ ID NO: 1, the sequence cited in the rejection.

Applicants have amended the claims to clarify language that they believed was quite clear. Claim 5, as previously presented, stated:

"with the proviso that two of the hydrophobic amino acids are adjacent tryptophans."

The Examiner is invited to point out, specifically, where -- Trp Trp -- occurs in a peptide of Travis or Little. The claim does NOT state "two of hydrophobic amino acids are adjacent to tryptophan," which is how the Examiner reads the claims. The incorrect

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reading of the straight-forward language caused the rejection. If the Examiner cannot show the recited structure, the rejection must be withdrawn.

AS to Little, SEQ ID NO: 1 (referred to at page 8, lines 25-26, and relied upon by the Examiner), is:

Lys Val Gly Trp Leu Ile Gln Leu Phe His Lys Lys

the following is claimed SEQ ID NO: 1:

His Pro Leu Lys Gln Tyr Trp Trp Arg Pro Ser Ile

The Examiner is called upon to explain how the former anticipates the latter.

In view of the foregoing, it is believed that the impropriety of the obviousness rejection will be clear. There is nothing in the two references to support a *prima facie* case of obviousness, and withdrawal of the rejection is called for.

With respect to the Written Description rejection, claim 31 recites SEQ ID NOS: 1-4. Claim 6 recites SEQ ID NO: 1. Are these described in the specification? They certainly are. Do they all satisfy the requirements of parent claim 5? They certainly do.

Why then, is claim 6, presented previously, part of this rejection? No explanation is given.

As to claims 5 and 7, the Examiner shifts between written description and enablement rejections at page 3. The fact is, one of ordinary skill in the art could readily envision peptide sequences falling within the claim. There must be at least 10-12 amino acids, in consecutive order. There must be a His, Glu, or Ser residue. There must also be two Trp residues next to each other. Seven residues must be hydrophobics and there are

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a limited number of hydrophobic amino acids. Three must be basic. There are a limited number of basic amino acids.

There are variants contained within claim 5, but they are easily envisioned by the skilled artisan, and the Examiner concedes that four specific amino acid sequences are taught.

Again, applicants do not see how written description is lacking. This rejection should be withdrawn.

The status of claim 8 is clarified as canceled.

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The application has been in prosecution for over 6 years. The current rejections are simply not tenable. Should they be maintained, a telephone interview with the Supervisory Primary Examiner is requested.

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Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0624, under Order No. NY-FAPESP 203-US (10026221) from which the undersigned is authorized to draw.

Dated: January 31, 2008

Respectfully submitted,

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